

Town Wins Lawsuit Against LIRR/MTA and NYSDEC To Clean Up Contaminated Dump Site in Yaphank

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Farmingville, NY – Farmingville, NY – On February 10, State Supreme Court Justice H. Patrick Leis ruled in favor of the Town of Brookhaven in its Article 78 claims against the LIRR/MTA and NYSDEC in a case that called for a new plan to remediate contaminated soil and hazardous materials from an unused LIRR yard in Yaphank. The site, which is only 1000 feet east of the Carmans River and near the Wertheim Wildlife Refuge, has been found to contain extremely high levels of contaminants including arsenic, lead, copper, mercury, zinc and what was reported to be “a slag-like material of unknown origin.”

The Town’s action was taken under the State Superfund Law to protect the environment by compelling the LIRR to clean up and remediate the toxic dumpsite rather than by just “covering it up” with a “cap.” It was also taken in response to the NYSDEC’s determination that the site should only be “capped,” leaving the contaminants in the ground. During a July 2014 press conference announcing the action, Brookhaven Town Supervisor Ed Romaine called this recommendation “completely unacceptable” in light of sample testing that has shown contaminated material to be at least 25 feet thick.

The recent State Supreme Court ruling by Justice Leis:

- Vacated the DEC Decision Document approving the “cap and store” remediation plan.
- Determined that the DEC’s handling of the matter under the Voluntary Cleanup Program was ultra vires because it failed to comply with the DEC’s statutory obligation under Title 13 of the Environmental Conservation Law (State Superfund Law) and the DEC’s own Regulations.
- Directed the DEC to place the LIRR Dump Site upon the State “Registry” of “Inactive Hazardous Waste Sites” under the Superfund Law.
- Directed the DEC to “classify” the level of environmental hazard of the site under the number 5 rankings of hazards specified in the statute.
- Directed the DEC to consider any remediation remedy pursuant to the State Superfund Law and Regulations which express a strong preference for full remediation to the “maximum extent feasible” followed by removal “of as much contaminants as feasible” and the maximum “containment” of the remainder.

Commenting on the ruling, Supervisor Romaine said, “The Town is now in an excellent position to insist upon a far more robust remediation plan and certainly an extensive, regular and timely monitoring program which would enable us to revisit any choice of remedy before the DEC if any off-site migration of contamination is ever detected by monitoring wells.

Councilman Michael Loguercio, who represents the community surrounding the LIRR site, said, “The ruling by Justice Leis is a win for the environment, the Carmans River and especially the people who live near this toxic dump site. I am pleased by the decision and thank Supervisor Romaine for his determination to get it cleaned up properly.”

The State Superfund Law was enacted in 1979 after the Love Canal environmental crisis in upstate New York. It is designed to provide Environmental Agencies such as the federal Environmental Protection Agency (EPA) and the NYSDEC, as “Trustees of the Environment,” with broad legal power to compel polluters such as the LIRR, to clean up contaminated sites, like the dump site in Yaphank.

Although there is no record of the disposal operation at the site, the MTA’s Remedial Action Work Plan, issued in December of 2012, states that it “was possibly used as a general disposal area for railroad-related materials generated from railroad track maintenance activities, as well as from electric and diesel train repair shops, from the 1950’s to the early 1970’s.” Since the early 1990s, several investigations have been conducted at the LIRR site, including soil and groundwater sampling programs. The LIRR completed an Interim Remedial Measure (IRM) of the wooded area to the south of the Western Lowland Area, along the east side of River Road in the spring of 2007 in order to remove all significantly impacted soil. Interim Remedial Measures activities were conducted at the property

and the adjoining residential property between July and November 2007.

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